

1988

# Bear River Mutual Insurance Company v. Anona Maughan : Reply Brief

Utah Court of Appeals

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DOCKET NO. 88 206-CA

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IN THE UTAH COURT OF APPEALS

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BEAR RIVER MUTUAL	)	Case No. 88 206-CA
INSURANCE COMPANY,	)	
	)	Priority No. 14b
Plaintiff/Appellant,	)	
	)	
vs.	)	
	)	
ANONA MAUGHAN,	)	
	)	
Defendant/Respondent.	)	
	)	

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REPLY BRIEF

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IN THE UTAH COURT OF APPEALS

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IN THE UTAH COURT OF APPEALS

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BEAR RIVER MUTUAL	)	Case No. 880035
INSURANCE COMPANY,	)	
	)	Priority No. 14b
Plaintiff/Appellant,	)	
	)	
vs.	)	
	)	
ANONA MAUGHAN,	)	
	)	
Defendant/Respondent.	)	
	)	

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REPLY BRIEF

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Comes now the plaintiff/appellant herein and hereby submits the following in response to the Brief filed by defendant/respondent. The purpose of this reply brief is not to repeat the arguments made in appellant's brief, but the purpose is to reply to the arguments made by respondent in her brief.

ARGUMENT

POINT I

PROXIMATE CAUSE OF THE LOSS SUSTAINED BY  
RESPONDENT WAS THE SUB-SURFACE WATER.

Respondent, in her brief, cites at length the law of proximate causation as stated in Couch on Insurance, 2d. The general rule, as stated in Couch, §74:696 requires respondent "to establish that liability within the coverage of her limited risk

homeowner's insurance policy) her loss must result from an act, operation covered by the policy, it must be the proximate result thereof and unless it is, there is no liability."

In Graham vs. Public Employees Mutual Insurance Company, 656 P.2d 1077, 1080-1081 (Wash. 1983), the Supreme Court of Washington stated the general rules, proximate causation when it held:

"We have defined proximate cause as the cause which, in a natural and continuous sequence, unbroken by any new, independent cause, produces the event, and without which that event would not have occurred. Where the peril specifically insured against sets other causes in motion which, in an unbroken sequence and connection between the act and the final loss, produced the result for which recovery is sought, the insured peril is regarded as the proximate cause of the entire loss.

It is the efficient or predominant cause which sets into motion the chain of events producing the loss which is regarded as the proximate loss, not necessarily the last act in the chain of events." (citations omitted) Id. at 1080-1081.

The general rule is again stated in 43 Am Jur 2d, Insurance, §463:

"The general rule of insurance law is that only the proximate cause of loss, and not the remote cause is to be regarded in determining whether recovery may be had under a policy of insurance, and that the loss be proximately caused by a peril insured against. . . . In insurance cases the concern is only with the nature of the injury and how it happened. . . . In other words, in determining causable loss for the purpose of fixing insurance liability when concurring causes of damage appear, the proximate

cause to which the loss is to be attributed is or may be the dominant or the efficient cause--the one that sets the others in motion--although other incidental causes may be nearer in time to the result and may operate more immediately in producing the loss."

In the present case the dominant or efficient cause--the one that set the other in motion--was the sub-surface water. Without the sub-surface water, respondent would not have had to hire a contractor to excavate around her home for the purpose of resolving the problems caused by the sub-surface water.

As is clearly and unambiguously stated in respondent's limited risk homeowner's insurance policy, that policy does not insure against loss caused by, resulting from, contributing to or aggravated by water below the surface of the ground. In his affidavit, Arnold W. Coon, a structural engineer, stated that in his opinion the failure of the foundation walls of respondent's home was caused by, resulted from, contributed to, or aggravated by water below the surface of the ground.

In the Graham case, supra, the mud flow which destroyed appellant's home in that case would not have occurred without the eruption of Mt. St. Helens. Graham, 656 P.2d at 1081.

In the instant case, the excavation around respondent's home would not have occurred without the existence of the sub-surface water around respondent's home.

Even if this Court finds it necessary to resolve this case based upon an inquiry on the issue of causation, it is respectfully submitted that such inquiry can only lead to one conclusion: that the sub-surface water was the proximate cause of the loss sustained by respondent.

#### POINT II

THE LOSS SUSTAINED BY RESPONDENT WAS CAUSED BY, RESULTED FROM, CONTRIBUTED TO AND WAS AGGRAVATED BY WATER BELOW THE SURFACE OF THE GROUND.

The parties in their respective briefs have outlined for this Court the law of interpreting insurance contracts. The limited risk homeowner's insurance policy purchased by the respondent provides as follows:

"This policy does not insure against loss: (3) caused by, resulting from, contributed to, or aggravated by any of the following:  
c. water below the surface of the ground . . ."

Based upon the clear and unambiguous language of the policy and respondent's admission that the sub-surface water was a contributing cause of the collapse, (respondent's brief, p. 90) this Court must reverse the trial Court's decision.

#### CONCLUSION

Despite respondent's argument and emphasis on the concept of proximate causation, this is a contract dispute. To resolve the issues herein, the Court must apply established rules of interpreting insurance contracts. The critical language, the exclusion upon which appellant has relied to deny coverage, is

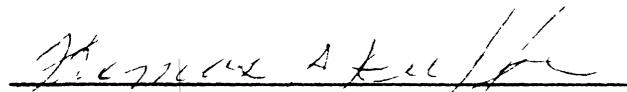
clear and unambiguous. The limited homeowner's insurance policy purchased by respondent specifically excludes loss caused by, resulting from, contributed to or aggravated by water below the surface of the ground. The evidence and respondent's admission, unequivocally established that the loss suffered by respondent was caused by the sub-surface water.

If, however, this Court determines that it is necessary to resolve this case by examining the issue of causation, it is respectfully submitted that the sub-surface water was the dominant or efficient cause of the collapse of respondent's home.

Based upon the foregoing, it is respectfully requested that this Court reverse the trial court's judgment.

Dated this 30 day of June, 1988.

JENSEN, DUFFIN, DIBB & JACKSON

  
\_\_\_\_\_  
Thomas A. Duffin  
Attorney for Appellant

MAILING CERTIFICATE

I certify that I mailed a copy of the foregoing  
Reply Brief to the following parties by placing a true copy  
thereof in an envelope addressed to:

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postage prepaid, this \_\_\_\_\_ day of June, 1988.

*Jerrold S. Jensen*

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